



SUBSCRIPTION SERVICES EVALUATION AGREEMENT

This Subscription Services Evaluation Agreement (“**Agreement**”) governs access to and use of Planview Applications (as defined below) for (a) evaluation purposes by current Customers of Planview’s on-premise software, under an Order Form, (b) for a proof of concept by prospective Customers of Planview under a Statement of Work, and (c) for a free trial by prospective Customers using the option available for the specific Planview Applications listed on Planview’s website at <https://www.planview.com/demos/> (the “**Free Trial**”).

Customer accepts this Agreement, which becomes binding on Customer when Customer (i) executes an Order Form or Statement of Work that references this Agreement, or (ii) clicks a box indicating acceptance when registering for a Free Trial. This Agreement is effective between Customer and Planview on the date of acceptance (the “**Effective Date**”).

1. **DEFINITIONS.** Capitalized terms in this Agreement have the following meanings:

1.1 “**Customer**” means the entity that (a) executes an Order Form with Planview to have an evaluation of a Planview Application, (b) executes a Statement of Work with Planview for a proof of concept of a Planview Application, or (c) accepts this Agreement on Planview’s website for purposes of a Free Trial.

1.2 “**Customer Data**” means electronic data, content, or other information collected, received, created, or hosted by the Planview Application in connection with Customer’s or its Users’ use of the Planview Application, including, for the avoidance of doubt, any personal data / personally identifiable information, all of which shall be considered Customer’s Confidential Information.

1.3 “**Data Processing Agreement**” or “**DPA**” means Planview’s Data Processing Agreement found at <https://www.planview.com/legal/agreements/#dpa>.

1.4 “**Documentation**” means the online user manuals that describe the functions, operation, and use of the Planview Application, which Planview makes available to Customers in its customer portal referred to as the “Customer Success Center”.

1.5 “**Evaluation Period**” means, as applicable, (a) the evaluation period specified in an Order Form, (b) the proof of concept period specified in a Statement of Work, or (c) with respect to Free Trials, thirty (30) days.

1.6 “**Intellectual Property Rights**” means any and all worldwide intellectual property rights, including copyright, rights in registered and unregistered trademarks (including domain names), trade secrets, patents, trade or business names, know-how, database rights, and other proprietary rights (including rights in any invention, discovery, or process), whether registered or unregistered, statutory, or common law, under any applicable laws anywhere in the world, and all moral rights related thereto.

1.7 “**Order Form**” means the document used by current Customers of Planview for ordering an evaluation of a Planview Application.

1.8 “**Planview**” means (a) for current Customers executing an Order Form for an evaluation and prospective Customers executing a Statement of Work for a proof of concept, the Planview entity that is the counter party to the Order Form or Statement of Work or (b) Planview Delaware, LLC, for Customers engaging in a Free Trial.

1.9 “**Planview Application**” means the Planview application designated in the applicable Order Form, Statement of Work, or Free Trial, hosted by Planview on a subscription basis.

1.10 “**Planview Data**” means data created by, or resulting from, the use of the Planview Application including analyses, statistics, reports, and aggregations, which (a) excludes all personally identifiable

information, such that there is no reasonable basis on which any individual, or Customer itself, could be identified by the Planview Data and (b) shall be considered Planview Confidential Information.

1.11 “Professional Services” means the services performed by Planview to set up the Planview Application for a proof of concept, as described in a Statement of Work.

1.12 “Statement of Work” means, if applicable, the document used by prospective Customers of Planview for purposes of ordering a proof of concept of a Planview Application.

1.13 “User(s)” means Customer's employees, consultants, and contractors (provided they are not competitors of Planview) who are designated by Customer to use the Planview Application during the Evaluation Period and have been supplied user identifications and passwords (“**Access IDs**”) by Customer.

2. PLANVIEW OBLIGATIONS

2.1 Planview Application. Planview will make the Planview Application available to Customer for the Evaluation Period, pursuant to the terms of this Agreement and any applicable Order Form or Statement of Work. For the avoidance of doubt, Planview may choose to, but shall have no obligation to, provide maintenance or support of any kind during the Evaluation Period.

2.2 Professional Services. If applicable, Planview will provide the Professional Services as described in the Statement of Work to set up the proof of concept for the Evaluation Period. Planview is responsible for the supervision, direction, and control of its personnel engaged in providing Professional Services.

2.3 Data Privacy and Security

2.3.1 Data Privacy. Planview will in addition to its confidentiality obligations under Section 6, collect, use, and process Customer Data solely in accordance with Planview's Privacy Statement found at <https://www.planview.com/trust/privacy/>. If Planview processes any personal data of individuals on Customer's behalf when performing its obligations under this Agreement, then the parties record their intention that Customer is the data controller or data intermediary (as defined under applicable data protection/data privacy laws) and Planview is the data processor and, in any such case, (a) Customer shall ensure that it is entitled to transfer the relevant personal data to Planview so that it may lawfully process the personal data on Customer's behalf; and (b) if applicable, the parties shall comply with the terms of the DPA. Furthermore, it is Customer's responsibility to inform its employees and/or consultants that their data is processed for authentication purposes on Planview Applications, and that access logs are kept for security audit purposes.

2.3.2 Data Security. Planview has implemented and will maintain security procedures and practices appropriate to information technology service providers designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure, as described at <https://www.planview.com/trust/security/> (the “**Security Plans**”).

3. CUSTOMER RESPONSIBILITIES

3.1 Access IDs. Customer is responsible for maintaining the confidentiality of all Access IDs and for all acts that occur with them in connection with Customer's account. Customer must notify Planview promptly after learning of any unauthorized use of Customer's account, breach of security, or loss or theft of Access IDs.

3.2 Use Guidelines and Restrictions. Customer shall use the Planview Application in accordance with the Documentation, this Agreement, and with all applicable laws. Customer shall not: (a) publish, disclose, copy, rent, lease, modify, loan, distribute, sell, resell, transfer, assign, alter, or create derivative works based on the Planview Applications or any part thereof; (b) reverse engineer, decompile, translate,

adapt, or disassemble the Planview Applications including to: (i) build or create a competitive product or service, and (ii) build or create a product or service using similar ideas, features, functions, or graphics of the Planview Application, nor shall Customer attempt to create the source code from the object code for the Planview Application; (c) permit any third party to access the Planview Application except as expressly permitted herein; or (d) create any unauthorized Internet “links” to the Planview Application or “frame” or “mirror” any content of the Planview Application.

4. FEES AND PAYMENT

4.1 Invoicing and Payment. If applicable to a given evaluation, Planview will invoice all fees as specified in and in accordance with the relevant Order Form or Statement of Work. All fees are payable in the currency set forth in the applicable document and, if not otherwise specified, all payments are due in full without set off, deduction, or withholding of any kind within thirty (30) days from the invoice date. All fees are non-refundable.

4.2 Remedies for Late Payment. If Customer's account is thirty (30) days or more past due, Planview reserves the right to suspend its performance of this Agreement, including suspension of access to the Planview Solution, until such amounts are paid in full.

4.3 Taxes. Unless otherwise stated, Planview's fees do not include any local, state, federal, or foreign taxes, levies, or duties of any nature (including VAT, value-added, or good and services). Customer is responsible for such amounts in addition to the fees, excluding taxes based on Planview's net income.

5. PROPRIETARY RIGHTS

5.1 Planview's Rights. As between the parties, Planview owns all right, title, and interest, including all Intellectual Property Rights, in and to (a) the Planview Applications and the Documentation, (b) the PLANVIEW trademark and any other trademarks used with the Planview Applications or services provided by Planview hereunder, (c) the Planview Data, and (d) all other Planview-supplied material developed for use in connection with the Planview Application generally, exclusive of Customer Data. Nothing in this Agreement shall be deemed to limit Planview's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services. Any rights not expressly granted herein are reserved by Planview. Except for the access and use rights expressly set forth in this Agreement, no other rights in or to Planview's intellectual property are granted to Customer. In no event shall any Planview Application be deemed to have been sold to Customer, even if, for convenience, Planview uses words such as “sale” or “purchase” in Order Forms or other documents or communications.

5.2 Customer Data. As between the parties, Customer owns all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data. Customer hereby grants to Planview a royalty-free, fully-paid, non-exclusive, non-transferrable (except as provided for in the DPA), worldwide, right to access and use Customer Data solely to provide the Planview Applications and perform services in support thereof. Planview is not responsible for reviewing and/or validating the Customer Data for accuracy, correctness, compliance with applicable law, or usability.

6. CONFIDENTIALITY

6.1 Confidential Information. “Confidential Information” means any information disclosed by either party (“Discloser”) to the other party (“Recipient”), in any form, that (a) Discloser identifies at the time of disclosure as confidential or proprietary or (b) should otherwise reasonably be understood by Recipient to be confidential or proprietary given the nature of the information, its legends and markings, or the circumstances of disclosure. Confidential Information may also include third-party confidential or proprietary information disclosed to Recipient. Recipient's obligations under this Section 6 will not apply to any Confidential Information that Recipient can document: (i) was or becomes in the public domain through no fault of Recipient; (ii) was rightfully known by Recipient, free of any restriction on use or disclosure, prior to

receiving the information from Discloser; (iii) is rightfully acquired by Recipient from a third party who has the right to disclose it and provides it free of restriction on use or disclosure; or (iv) was independently developed by Recipient without reference to any Confidential Information.

6.2 Recipient's Obligations. Recipient will treat all Confidential Information with the same degree of care as Recipient accords to Recipient's own confidential information, but in no event less than reasonable care. Recipient will not use, copy, disseminate, or disclose any Confidential Information except to the extent necessary for the purpose of providing and/or receiving the Planview Application, Professional Services, and/or Documentation under this Agreement or to enforce its terms (collectively, the "**Purpose**"). Recipient will disclose Confidential Information only to those of its employees, agents, officers, directors, and advisors who need to know such information for the Purpose and who are bound by confidentiality obligations no less protective than those required under this Section 6 (each, a "**Representative**"). Recipient will be responsible for any Representative's failure to comply with the terms of this Section 6. Disclosure to anyone other than a Representative will require Discloser's prior written consent. Recipient will give prompt notice to Discloser of any unauthorized use or disclosure of Confidential Information of which it becomes aware and will assist Discloser in remedying any such unauthorized use or disclosure. Recipient may not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody Confidential Information and that are provided to Recipient under this Agreement.

6.3 Compelled Disclosure. A disclosure by Recipient of any Confidential Information that is (a) legally compelled by a court of competent jurisdiction or required by a regulatory or governmental body to be disclosed, or (b) necessary to enforce this Agreement, will not be considered a breach of this Agreement; provided, however, that Recipient will, if legally permitted, provide Discloser (i) prompt notice thereof prior to the compelled disclosure so that Discloser may seek an appropriate protective order or other remedy, and (ii) reasonable assistance in obtaining any such order or remedy. If Recipient is nonetheless legally compelled or otherwise required to disclose, then it will disclose only that portion of the Confidential Information that is legally required and will make reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so disclosed.

6.4 Return or Destruction of Confidential Information. All documents, materials, and other tangible or intangible objects furnished to Recipient by Discloser (whether or not they contain or disclose Discloser's Confidential Information) are the property of Discloser and all summaries, copies, and excerpts thereof made by Recipient or otherwise in Recipient's possession are and will remain the property of Discloser. After any request by Discloser, Recipient will promptly return or destroy all such documents, materials, and objects, as well as all such summaries, copies, and excerpts. Notwithstanding the foregoing, Recipient may retain a copy of Confidential Information to the extent required for reasonable internal risk, insurance, or audit purposes, as well as any electronic copies made as part of Recipient's standard backup and archival practices, provided that any such Confidential Information retained shall remain subject to the terms and obligations set forth in this Agreement.

6.5 Injunctive Relief. Each party agrees that its obligations under this Section 6 are necessary and reasonable in order to protect Discloser and its business, and expressly agree that monetary damages may be inadequate to compensate Discloser in the event of a breach of this Section. Accordingly, each party acknowledges that any such breach or threatened breach may cause irreparable and continuing injury to Discloser and that, in addition to any other remedies that may be available in law, at equity, or otherwise, Discloser will be entitled to seek injunctive relief without the necessity of proving actual damages or posting a bond to obtain a preliminary injunction. However, the foregoing will not relieve a party of its obligation to demonstrate harm to obtain a permanent injunction.

7. INDEMNIFICATION. Customer will (a) defend Planview from any third-party claims, demands, suits, or proceedings made or brought against Planview alleging that the Customer Data (or Planview's use of it in accordance with this Agreement) or Customer's access to or use of the Planview Application infringes or misappropriates the Intellectual Property Rights of, or has otherwise harmed, a third party and (b) pay, with respect to any such third-party claim, all court-ordered awards of damages or amounts agreed to in settlement by Customer.

Customer will not settle a Claim in a manner that requires Planview to admit fault or liability or admits same on the other party's behalf, without its prior consent.

8. DISCLAIMERS

8.1 Warranty Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, PLANVIEW MAKES NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE. PLANVIEW DOES NOT WARRANT THAT THE PLANVIEW APPLICATION WILL BE UNINTERRUPTED, ACCURATE, OR ERROR-FREE OR THAT IT WILL BE SUITABLE FOR OR MEET THE REQUIREMENTS OF CUSTOMER.

8.2 Damages Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL PLANVIEW HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, INCLUDING FOR LOSS OF OR DAMAGE TO RECORDS OR DATA (INCLUDING CUSTOMER DATA), LOST PROFITS, AND LOSS OF USE, AND IRRESPECTIVE OF WHETHER THE LOSS OR DAMAGE IS DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR HOWEVER CAUSED, AND WHETHER OR NOT PLANVIEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN THE EVENT THE DISCLAIMER OF ALL LIABILITY IS NOT PERMITTED BY LAW, THEN PLANVIEW'S MAXIMUM LIABILITY FOR ANY DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES IN THE AMOUNT OF \$1,000.

9. TERM AND TERMINATION

9.1 Term of Agreement. This Agreement commences on the Effective Date and continues until the Evaluation Period has expired or been terminated.

9.2 Termination. A party may terminate this Agreement for cause (a) immediately on notice, if the other party's material breach of this Agreement remains uncured for a period of sixty (60) days after receipt of notice specifying the material breach from the non-breaching party; or (b) immediately on notice, if the other party has (i) committed a material breach of this Agreement that is incapable of remedy or (ii) is the subject of any corporate action, application, order, proceeding, appointment, or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise), or bankruptcy, or if it is unable to pay its debts as they fall due. In addition, either party may terminate the Evaluation Period for any reason, or no reason upon notice to the other party.

9.3 Effects of Termination. Upon expiration or termination of this Agreement for any reason, Planview will immediately disable access to the Planview Application unless Customer converts to a subscription of the Planview Application, in which case the Planview Application will remain accessible although ongoing use and access will be governed by the terms of a definitive subscription services agreement between Planview and Customer. Sections 1, 4, 5, 6, 7, 8, 9.3, and 10 shall survive any expiration or termination of this Agreement.

9.4 Customer Data. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CUSTOMER DATA USED FOR THE EVALUATION OF THE PLANVIEW APPLICATION CANNOT BE RETRIEVED AT THE END OF THE EVALUATION PERIOD AND WILL BE DESTROYED UNLESS CUSTOMER CONVERTS TO A SUBSCRIPTION OF THE PLANVIEW APPLICATION, IN WHICH CASE THE CUSTOMER DATA USED IN THE EVALUATION WILL BE MAINTAINED FOR THE SUBSCRIPTION.

10. GENERAL PROVISIONS

10.1 Relationship of the Parties; Third-Party Beneficiaries. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Neither party has the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. There are no third-party beneficiaries to this Agreement.

10.2 Entire Agreement; Order of Precedence. This Agreement, including any documents referenced herein, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter, including any agreement between Planview and Customer for an on-premise software solution (the "**On-Premise Agreement**"). In the event of any conflict or inconsistency between the following documents, the order of precedence shall be: (a) the applicable Order Form or Statement of Work, (b) this Agreement, (c) the Documentation and Support Terms, and (d) if applicable, the On-Premise Agreement. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer-initiated order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. The section headings in this Agreement are solely for the convenience of the parties and have no legal or contractual effect.

10.3 Changes. Planview may modify this Agreement at any time by posting a revised version on its website, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted. If Customer objects to the updated Agreement, as its sole and exclusive remedy, Customer may choose to stop accessing the Planview Application and terminate its evaluation on notice to Planview.

10.4 No Reliance. Each party acknowledges and agrees that, (a) in entering into this Agreement, it does not rely on and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made) or understanding of any person (whether party to this Agreement or not) which is not expressly set out in this Agreement; and (b) the only remedy available to it for breach of any statement, representation, warranty or other term which is expressly set out in this Agreement shall be for breach of contract under the terms of this Agreement.

10.5 Severability. If any provision of this Agreement is determined in any proceeding binding upon the parties to be invalid or unenforceable, that provision shall be deemed severed from this Agreement, and the remaining provisions of this Agreement shall remain valid and in effect.

10.6 Force Majeure. Planview shall not be liable for any failure or delay in performance under this Agreement for causes beyond its reasonable control, including, but not limited to, acts of God, acts of government, pandemic, epidemic, accident, flood, fire, extreme weather conditions, civil unrest, war, riot, theft, malicious damage, acts of terror, power failure, failure of telecommunications networks or default of suppliers or sub-contractors, strikes or other labor problems, and malicious cyber-attacks.

10.7 Assignment. Customer may not sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under the Agreement without the prior written consent of Planview. Any other purported attempt to do so is void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

10.8 Governing Law; Venue. For Customers with an On-Premise Agreement, this Agreement shall be construed and governed by, and exclusive jurisdiction shall rest with, the state or other jurisdiction specified in the On-Premise Agreement. For prospective Customers executing a Statement of Work for a proof of concept of a Planview Solution or accepting this Agreement on Planview's website for a Free Trial, this Agreement shall be construed and governed by, and exclusive jurisdiction shall rest with, the laws of Delaware, without regard to its conflicts of laws principles, to the extent such principles would result in the application of another state's or jurisdiction's laws. The United Nations Convention on the International Sale of Goods will have no application to this Agreement.

10.9 Attorney's Fees. Each party hereby consents to the exclusive jurisdiction of such courts. If either party employs attorneys to enforce any rights arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party.

10.10 Notice. All notices under this Agreement shall be in writing and shall be deemed to have been given and received upon: (a) personal delivery; (b) three (3) business days after sending by registered or certified mail, return receipt requested, postage prepaid; (c) one (1) business day after deposit with a commercial overnight carrier, with written verification of such receipt; or (d) except for notices of termination or an indemnifiable claim, which shall clearly be identified as such, the day of sending by email. All communications to Customer will be to the contact and address specified in the applicable Order Form (or such other address as a party may later specify by notice to the other). Notices to Planview shall be addressed to the address listed in the Order Form, to the attention of the Legal Department, with email notices being sent to planviewlegal@planview.com.

10.11 Export Compliance. The Planview Application, Documentation, other Planview technology, and derivatives thereof may be subject to export laws and regulations of the U.S. and other applicable jurisdictions. Each party represents that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use the Planview Application or Documentation in a country or region that is embargoed by the U.S. or other applicable jurisdictions or in violation of any export law or regulation of the U.S. or other applicable jurisdictions.